Security Act, 1960, is, as I have already indicated, entrusted by the legislature to the President alone and not to any Minister or to the Government or to the party in power, for any applicant to succeed on the ground of bad faith, he must not only show that the courts are entitled to enquire into the good faith or otherwise of the President of the Republic of Singapore, but, assuming the courts are so entitled, he must also allege and prove that the President and not some one else had acted *mala fide* in directing that he be detained under the Act.

On the ground that the five orders made relating to the first five applicants by the Minister of the Interior and Defence under section 8(1A) are *ex facie* defective orders and do not therefore provide legal justification for the present detention of the first five applicants I direct that an order be drawn up for their discharge from custody.

As regards the sixth applicant the rule *nisi* is discharged. As all the applicants have chosen to make a joint application and having regard to the grounds put forward by them in support of their joint application I order that the costs of this application are to be taxed as a whole and that the respondent do pay half the costs as so taxed.

Order accordingly.

KIAN AIK CHAN HUP KEE LTD. v. ANTHONYSAMY & ORS.

[O.C.J. (Chang Min Tat J.) March 4, 1968]
[Ipoh — Originating Motion No. 12 of 1967]

Workmen's Compensation — Claim at common law and claim under the Ordinance — Parents claiming in tort — Settlement reached without court proceeding — Claim by other dependants under Ordinance — Assessment by commissioner — Whether commissioner precluded from pursuing inquiry for compensation under Ordinance — Workmen's Compensation Ordinance, 1950, ss. 8(a), 27 & 41.

Workmen's Compensation — Injunction — Application for, to restrain commissioner from pursuing inquiry for compensation after settlement of damages under common law — Workmen's Compensation Ordinance, 1950, s. 41.

Words and Phrases — "Dependant" and "partial dependant" — Meaning of "partial dependant".

A. died from injuries sustained in an accident arising out of and in the course of his employment. His brothers and sisters applied for compensation under the Workmen's Compensation Ordinance, and assessment of $4,025.88 was made by the commissioner. In the meantime his parents obtained under the civil law, damages of $5,000 from his employers by compromise. In this application the employers prayed for a declaration that they had fully discharged their liability to all persons in respect of the death of *A.*, and for an injunction restraining the commissioner from pursuing any inquiry for compensation by reason of the death of *A.* The commissioner opposed the application and argued that there was nothing in the Ordinance on the facts of the case to prevent him from holding the inquiry.

Held, refusing the application: (1) on a proper interpretation of section 41 of the Ordinance, the employers were not entitled to the injunction they sought against the commissioner, there being no suit for damages instituted or prosecuted in any court;

(2) if the brothers and sisters of the deceased were dependants of the deceased within the meaning of the Ordinance then notwithstanding the acceptance by the parents of the damages under civil law, they were at law entitled to claim under the Ordinance.

Obiter: Where the deceased workman left only partial dependants then the amount of compensation shall be "such lump sum not exceeding in any case the amount payable as may be determined by the commissioner to be reasonable or proportionate to the loss suffered by such dependants". This, of course, does not mean that the maximum sum that can be awarded under the Ordinance cannot be awarded in the case of partial dependants, as conceivably there can be circumstances where the dependency, though partial, is nevertheless of such a degree as to justify the arbitrators to award the maximum sum that can be awarded as being reasonable and proportionate to the loss suffered.

For a claimant to succeed as a partial dependant, he must be one within the meaning of the Ordinance.

Cases referred to:—

(1) *Curtis* v. *Stovin* (1889), 22 Q.B.D. 512, 517.

(2) *Ditcher* v. *Denison* (1857), 11 Moore, P.C. 325, 337.

(3) *Avery & Ors.* v. *London and North Eastern Railway Co.* [1938] A.C. 606.

ORIGINATING MOTION.

P. Arulanandom for the applicants.

1st and 2nd respondents in person.

Sheikh Abdul Rahman bin Sheikh Abu Bakar (Legal Adviser, Perak) for the 3rd respondent.

Cur. Adv. Vult.

Chang Min Tat J.: In this application made by originating motion the employers of one A. Amaldass s/o Anthonysamy prayed for a declaration that they had fully discharged their liability to all persons in respect of the death of their employee, and for an injunction restraining the Commissioner for Labour, Perak, in his capacity as commissioner under the Workmen's Compensation Ordinance, 1950, from pursuing any inquiry for compensation by reason of the death of the employee.

The facts of the case, save for the one fact of dependency, are not in dispute.

A. Amaldass s/o Anthonysamy (hereinafter called the deceased), an employee of Kim Aik Chan Hup Kee Ltd., the applicants herein, died at the age of 16 on the 22nd March, 1966, from injuries sustained in an accident arising out of and in the course of his employment, in circumstances, however, which would indicate that his estate and his dependants had a *prima facie* case

in tort against the employers. In such a situation, an election immediately posed itself and the dependants had to choose between a claim in common law and a claim under the Ordinance. The deceased died leaving him surviving his parents, an elder brother, and an elder sister, and ten other younger brothers and sisters. The father, to his credit, did not claim to be a dependant and, in point of fact, wrote on 19th October, 1966, to the Commissioner for Labour, Perak, that he would not claim any damages under the Workmen's Compensation Ordinance on behalf of the abovenamed deceased. An application was, however, made by the deceased's mother and all his brothers and sisters for compensation under the Ordinance, and assessment of some $4,025.88 was made by the commissioner as being due to the applicants. In the meantime, the father and mother of the deceased made a demand against the employers for damages in tort. In complete ignorance of the application before the commissioner, the employers settled the claim at $5,000, which was nearly 25% more than the assessment by the commissioner. The sum of $5,000 was then paid over to the father and mother. Their receipt took the form of a discharge of the employers and their insurers against further liability. In the view I have taken of the application, it is not necessary to refer to the terms of the discharge. But it is clear that the settlement was reached without any case having been instituted in any court of law and without the father and mother of the deceased obtaining any letters of administration in the estate of the deceased. In due course, on the 10th of March, 1967, the Commissioner for Labour made a demand to the employers for payment of the assessed compensation and seeking their agreement in the regulation Form H. This demand was expressed to be on behalf of the mother and 13 others. Who these 13 others were was not stated, but inasmuch as the deceased was survived by his two parents and 12 other brothers and sisters, it would mean that the father was included among the claimants — a surprising state of affairs in the face of the father's categorical refusal to claim.

Be that as it may, the employers not unnaturally, took the attitude that they had paid off the claim and wrote to the commissioner advising him of the payment of $5,000 to the father and the mother of the deceased. When confronted with this allegation which she, of course, could not deny, the mother took the only course open to her. She had her name struck out from the application. The names, however, of the other brothers and sisters of the deceased remained, the application being persisted with.

A fresh demand, similarly in Form H, was sent on the 24th July, 1967, to the employers on behalf of the applicant, A. Sandanasamy, the elder brother of the deceased, aged 23 years at the time of the accident and death, and of his other brothers and sisters. It was for a similar sum of $4,025.88, which the commissioner stated was the entitlement of the claimants, and it is clear that this sum being 36 times $111.83, the monthly wages of the deceased, was the maximum that could be awarded under the Ordinance for total dependency.

When it became apparent that the brothers and sisters of the deceased were persisting with their claim under the Ordinance and that the Commissioner for Labour, Perak, proposed to proceed with an enquiry under section 27 of the Workmen's Compensation Ordinance, the employer filed the application in question, and urged on me that the family of the deceased, having already obtained civil law damages by compromise, was not entitled to receive compensation under the Ordinance. The 1st and 2nd respondents, the father and mother of the deceased, with the $5,000 safely in their pockets, had naturally nothing to say. The Commissioner for Labour, Perak, however, strenuously opposed the application and argued that there was nothing in the Ordinance on the facts of the case to prevent him from holding the enquiry.

The relevant section is section 41 of the Ordinance and, in its relevant parts, reads as follows:—

> "Nothing contained in this Ordinance shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted and is prosecuting a suit for damages in respect of that injury in any court from his employer . . ."

Having regard to the peculiar wording of this section, and if the phrase "in any court" is not to be treated as surplusage, always remembering that there is no presumption against surplusage unless for good reason to the contrary (see, *inter alia*, *Curtis* v. *Stovin*,[1] *Ditcher* v. *Denison*[2]), I must, though not without regret, come to the conclusion that on a proper interpretation of the section, the employers are not entitled to the injunction they seek against the Commissioner for Labour, there having been no suit for damages instituted or prosecuted in any court.

As for the first prayer, quite clearly, if the brothers and sisters of the deceased were, as a matter of fact, dependants of the deceased, within the meaning of the Ordinance, then notwithstanding the acceptance by the parents of the sum claimed by way of civil law damages, they are at law entitled to claim under the Ordinance. There is in section 41(1), *supra*, of the Ordinance nothing restricting their rights as dependants within the scope of the legislation to do so.

There was similarly no such restriction in England in the corresponding section, section

29(1) of the Workmen's Compensation Act, 1925, which read as follows:—

"29. (1) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act' and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid."

It is to be noted that the English section spoke of proceedings independently of the Act in contradistinction to a suit for damages in any court. Despite this enlargement in the English Act of a workman's scope, his dependants could nevertheless claim under the Act when his other dependants had succeeded in other proceedings under the Fatal Accidents Acts, 1846 and 1864. The authority for this was the case of *Avery & Ors.* v. *London and North Eastern Railway Co.*,[3] a decision of the House of Lords. In this case, 4 workmen in the employ of the respondent company were killed. Their widows claimed damages under the Fatal Accidents Acts, 1846 and 1864 and the Employers' Liability Act, 1880, on behalf of themselves and not on behalf of any other dependants. The children of each of the workmen brought in claims under the Workmen's Compensation Act, 1925. The House of Lords held (see headnote) that in assessing the damages recoverable by the widows in the actions brought by them the county court judge was right to ignore the fact that the children were claiming compensation in respect of the same accident under the Workmen's Compensation Act and, similarly, in respect of the claims by the children to compensation he was right to ignore the fact that the widows were claiming damages.

There is now, strictly, no necessity for me to go further but in the hope that this unfortunate case may come to an early determination, I take leave to wander by way of *obiter dicta* into certain aspects of the case.

Section 8(a) of the Ordinance prescribes the maximum amount recoverable where death has resulted from the injury. It is a lump sum equal to 36 months' earnings or $7,200, whichever is the less. There is, however, a proviso to section 8(a), which makes it clear that this maximum sum is ordinarily to be awarded in the case where the deceased workman left dependants wholly dependent upon his earnings. Where there are no such dependants but only dependants in part so dependent, then the amount of compensation shall be "such lump sum not exceeding in any case the amount payable as may be determined by the commissioner to be reasonable and proportionate to the loss suffered by such dependants." This, of course, does not mean that the maximum sum that can be awarded under the Ordinance cannot be awarded in the case of partial dependants, as conceivably there can be circumstances where the dependency, though partial, is nevertheless of such a degree as to justify the arbitrator to award the maximum sum that can be awarded as being reasonable and proportionate to the loss suffered. That is essentially a question of fact depending upon a view of all the circumstances.

Having regard to the proviso to section 8(a), I confess myself considerably surprised that in exercising his functions under the Ordinance, the commissioner should have ignored the fact, so clearly established, and the one saving grace on the side of the deceased's family, that the father was not and did not claim to be a dependant, either for himself or in the discharge of his legal duty of maintaining his family. This must presuppose that he is in gainful employment, or at least in receipt of an income which enables him to provide for his wife and family. It follows then that if the brothers and sisters are dependent on the deceased, they are if at all, only partially dependent on him, their first source of dependency being necessarily their provident and living father.

Not only had the commissioner ignored this, but I find that in the two applications, the first by the mother and all the brothers and sisters (excluding the father, though he would appear to have been included therein), the second by only the brothers and sisters, he had awarded the same maximum sum of $4,025.88 in each case.

Then I would commend to the commissioner the definition of "dependant" in the Ordinance. It includes, I know, a partial dependant, but he is a partial dependant only if he was dependent partially on contributions for the provision of the ordinary necessities of life. This is, of course, a fact for the arbitrator to find, but in view of the peculiar operation of the Ordinance whereby the commissioner can, in Form H (which, to my mind, is most unfortunately worded) require the payment of a sum determined by the commissioner as by entitlement and not by assessment, the commissioner should bear in mind his duty at all times to ascertain whether a claimant is dependent wholly or only partially dependent before coming to his assessment. For a claimant to succeed as a partial dependant, he must be one within the meaning of the Ordinance.

The unfortunate employer, who had not sought to escape his liability and had not hesitated to pay more than the maximum sum under

the Workmen's Compensation Ordinance, now finds himself faced with another claim. He might have saved himself all this trouble if he had, after arriving at the compromise, hailed the father and mother of the deceased before the commissioner to record a settlement under the second part of section 41(1) to include the other members of the family, but that is hind-sight wisdom and he could not have known, on the facts advanced to him by the father and mother of the deceased that not only the younger brothers and sisters but also the elder brother and sister of the deceased claimed to be dependants.

In the result, the application is refused, but in all the circumstance of the case, there will be no order as to costs. I am grateful to the Legal Adviser, Perak, for so ably assisting the court and would assure him that in denying costs to the commissioner, I am in no way casting any adverse reflection on him.

Application refused.

Solicitors: *Arulanandom & Co.*

KUEH TECK LIN & ORS. v. HOCK HUA BANK LTD.

[O.C.J. (Williams J.) April 27, 1968]
[Kuching — Civil Suit No. K. 119 of 1967]

Land Law — Easement of support — Not registered — Indefeasibility of title — Land Code (Sarawak Cap. 8), s. 132 — Land Settlement Ordinance (Cap. 28 Rev. edn. 1948), ss. 26, 34, 50.

Negligence — Standard of care — Failure to underpin party wall — Damage to adjoining houses — Whether foreseeable.

The plaintiffs and the defendant were registered owners of the adjoining parcels of land. A row of shophouses had been built on the lands, on foundation which ran through from the plaintiffs' to the defendant's land. The defendant demolished two shophouses on its land, and erected a new building on the site. The plaintiffs brought an action for (1) damage caused to his shophouse because of the defendant's failure to underpin the party wall; (2) damage caused to the roof as a result of the negligent acts of workmen engaged in the construction of the new building. The claim was based on the existence of an easement of support and negligence.

Held: (1) the Land Settlement Ordinance required all rights affecting land to be registered. As the register did not show that the plaintiffs were entitled to an easement of support, his claim for damages under this head therefore failed;

(2) damage arising from the failure to underpin the party wall was foreseeable. By failing to underpin the wall, the defendant did not exercise the standard of care required of it and was liable for the consequent damage to the plaintiffs' shophouse.

Per Williams J.: "I do not think any easement can be founded upon any basis put forward upon either implication or presumption. Land law in Sarawak is, for better or worse governed by the Land Code and . . . section 132 clearly lays down the principle of the indefeasibility of title".

Cases referred to:—

(1) *Anne & Margaret Dodd* v. *Samuel & James Holme* 110 E.R. 1296.

(2) *Southward & Vauxhall Water Co.* v. *Wandsworth District Board of Works* [1895-9] All E.R. Rep. 422.

CIVIL SUIT.

T. O. Thomas for the plaintiffs.

S. K. T. Yong for the defendant.

Cur. Adv. Vult.

Williams J.: This case concerns a claim for damages for damage to a shophouse No. 27 Rock Road, Kuching, resulting from the demolition of shophouses formerly known as Nos. 28 and 29 Rock Road and the construction on the site of a new building. Shophouse No. 27 is situated on that parcel of land known as No. 9 of section 25 of Kuching Town Land District whilst shophouse No. 28 was situated on that parcel of land known as No. 10 of section 25 of the Kuching Town Land District. The plaintiffs are the registered proprietors of the former parcel of land whilst the defendant is the registered proprietor of the latter. The central issue of fact in this case is did the erection of the defendant's building result in damage to the plaintiffs' shophouse. If so, then (1) is the defendant estopped from denying liability; (2) is the defendant liable for interfering with the right of support; or (3) did the defendant's agents act negligently so as to cause damage to the plaintiffs' property.

With regard to the damage, however, I note there are two questions. One arises out of the damage caused by the subsidence, if any, of the land comprising parcel No. 9. The other arises out of the damage caused to the roof of the shophouse No. 27 as a result of the negligent acts of the workmen engaged in the construction of the new building.

The first question that I will concern myself with is that of damage caused by the foundation work carried out in respect of the new building. In this matter I have had the benefit of the opinions of two expert witnesses. Mr. Gudgeon, for the plaintiffs, attributes the damage, namely the cracks in the party walls, in the cross walls, in the ground floor slab and sundry minor damage to the roof, lintels, windows and doors, to an interference with the existing foundations of the party wall between shophouses No. 27 and No. 28. In his opinion there has been a failure to underpin that wall as was originally intended and planned for. There has thus been a settlement caused by the construction of the new building which in turn, as I understand it, has caused the old wall to crack. This settlement has caused the party wall between shophouses Nos. 27 and 28 to drag on the party wall between shophouses